# United States Department of the Interior

**BUREAU OF LAND MANAGEMENT**

Utah State Office
P.O. Box 45155
Salt Lake City, UT 84145-0155
http://www.blm.gov/ut/st/en.html

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## DECISION

| | | |
|---|---|---|
| Southern Utah Wilderness Alliance | : | Protest to the Inclusion of Seven |
| c/o Stephen Bloch and David Garbett | : | Parcels in the November 15, 2011 |
| 425 East 100 South | : | Competitive Oil and Gas Lease Sale |
| Salt Lake City, Utah 84111 | : | |

**Protest Denied**

On August 15, 2011, the Bureau of Land Management (BLM) provided notice to the public that 14 parcels of land would be offered in a competitive oil and gas lease sale scheduled for November 15, 2011. The notice also indicated that the protest period for the lease sale would end on September 15, 2011. In a letter received by the BLM on September 15, 2011, the Southern Utah Wilderness Alliance (SUWA), The Wilderness Society (TWS), Natural Resources Defense Council (NRDC), Grand Canyon Trust (GCT), and Rocky Mountain Wild (RMW)[1,2] (collectively referred to as SUWA) protested the inclusion in the sale of seven of the 14 parcels. Six of the parcels are on public lands administered by the BLM's Price Field Office (PFO) and one is on lands administered by the Vernal Field Office (VFO), as follows:

Price Field Office:

| | | |
|---|---|---|
| UTU88624 (UT1111-017) | UTU88625 (UT1111-018) | UTU88626 (UT1111-019) |
| UTU88627 (UT1111-020) | UTU88628 (UT1111-021) | UTU88629 (UT1111-022) |

Vernal Field Office:

UTU88622 (UT1111-011)

By errata notice dated November 14, 2011, the BLM deferred offering parcel UT1111-011 (UTU88622). Consequently, the protest as to the parcel is denied as moot.

[1] Only SUWA's information was provided on the protest.
[2] Rocky Mountain Wild joined the protest only as it pertained to parcel UTU88622.

This decision responds to the SUWA protest as it pertains to the remaining six protested parcels.

The protest alleges that in offering the six parcels for lease, the BLM has violated the National Environmental Policy Act (NEPA) and the Federal Land Policy and Management Act (FLPMA).

The protest contends that the parcels should be withdrawn from the lease sale until such time that BLM has complied with NEPA and FLPMA or, in the alternative, that the BLM should attach unconditional no surface occupancy (NSO) stipulations to each parcel before issuing leases.

**Decision**

For the reasons set forth below, I have determined that BLM complied with the requirements of NEPA, FLPMA, and other applicable Federal laws and regulations prior to the inclusion of the seven parcels in the November 15, 2011 lease sale. Consequently, SUWA's protest is denied.

Protest Contention: BLM must protect the proposed Nine Mile Canyon Areas of Critical Environmental Concern (ACECs).

BLM Response: BLM gave consideration to the proposed Nine Mile Canyon ACEC during the land use planning (LUP) process. Nominations were solicited and received and the relevance and importance values (R&I values) of each were determined by the field offices.

Through the LUP process in the PFO, a portion of the Nine Mile Canyon ACEC was carried forward and made an ACEC. It was determined that the R&I values of the other portion could be protected through law, policy and procedures (page 47, PFO ROD and Approved RMP). A portion of parcel UTU88625 is within the Nine Mile ACEC and therefore the Nine Mile ACEC (federal land) NSO stipulation has been attached to the lease. The other leases are not within the ACEC and therefore do not have the NSO stipulation. However, they do have protective stipulations attached which control the timing and location of any eventual wells. The six parcels also lie within the West Tavaputs Plateau (WTP) Environmental Impact Statement (EIS) project area; Therefore future actions will have site specific conditions of approval applied as per the applicable lease notice when determined to be necessary from the NEPA review conducted for the action. A lease notice informs the lessee that the ROD for WTP exists and that there may be additional provisions applied to any applications for permit to drill in that area. The provisions include but are not limited to, protection of cultural resources, as outlined in the WTP Programmatic Agreement; wildlife mitigation, as outlined in the WTP wildlife mitigation plan; water quality monitoring, as outlined in the Water Quality Monitoring Plan; and air quality measures, which would minimize air quality impacts. Additional provisions can be found in Attachment 2 of the WTP EIS ROD.

The protest claim that the BLM must offer the six subject leases with a no surface occupancy stipulation or other highly restrictive stipulations in order to comply with FLMPA's mandate to give priority to the designation of ACECs is incorrect. The BLM has already fulfilled that obligation by giving full consideration of the potential ACEC(s) and then designating appropriate areas during the LUP process.

Protest Contention: BLM has failed to comply with the requirements of Secretarial Order 3310 and Washington Office (WO) Instruction Memorandum (IM) 2010-117.

BLM Response: On April 14, 2011 the United States Congress passed the Department of Defense and Full-Year Continuing Appropriations Act (Public Law 112-10), which includes a provision (Section 1769) that prohibits the use of appropriated funds to implement, administer, or enforce Secretarial Order 3310 in Fiscal Year 2011. On June 1, 2011, the Secretary issued a memorandum to the BLM Director that in part affirms BLM's obligations relating to wilderness characteristics under Sections 201 and 202 of FLPMA. WO IM 2011-154 further clarifies that the requirements of Sections 201 and 202 of FLPMA remain in effect and that BLM Manuals 6301, 6302, and 6303 dated February 25, 2011 are placed in abeyance. The Price field office has fully complied with Sections 201 and 202 of FLPMA and WO IM 2010-117. These parcels were inventoried in 1979 and 1999 and those inventories were updated as part of the land use planning process completed in 2008. A final decision on how the inventoried lands would be managed was included in the Price ROD and Approved RMP, completed in October 2008. The decision in the Price Record of Decision was to not to manage the lands being considered in this lease sale for protection, preservation, or maintenance of their wilderness characteristics. Rationale for these decisions is provided in the Approved RMP. While the BLM will not re-evaluate its planning decision as part of this lease sale, impacts to lands with wilderness characteristics from leasing and potential development were analyzed in the leasing EAs prepared for the November 2011 sale.

Protest Contention: Leasing will further contribute to exceedances of air quality standards.

BLM Response: The NAAQS is a set of standards that when exceeded and determined to be in violation prescribes a defined set of actions from both the state and federal government. To date, there has not been an exceedance of the NAAQS in the Uintah Basin. The NAAQS are not, nor were they intended to define or limit specific source categories from operating prior to implementation of an EPA-approved SIP. To do so would be an arbitrary and capricious application of the NAAQS to a process they were not intended to regulate, and would not be supported by the current understanding of winter ozone formation in the Uinta Basin.

Federal oil and gas leases do not produce air emissions, so the leasing of these parcels will have no impact on air quality. Development of the lease parcels can reasonably be expected to entail air emissions; however whether actual development will necessarily mean an increase in emissions has yet to be determined[3]. There is simply not enough known about the winter ozone issue to pre-determine what the eventual control strategy will be. In the meantime, BLM does and will continue to require compliance with all applicable air pollution control laws. There is no current air pollution control law, including the NAAQS, that prohibits the development and/or operation of air pollution emitting activities in the Uinta Basin, even given the monitored winter ozone values currently being measured.

Protest Contention: Lease stipulations are insufficient to protect air quality resources.

BLM Response: No Federal or State agency understands what is driving winter ozone formation in the Uintah Basin and consequently, there is no best practice for controlling this problem. This means it is premature to arbitrarily declare what is effective or ineffective for controlling winter ozone. The BLM's lease stipulations currently (and will continue) to require all oil and gas development to represent the presumptive Best Available Control Technology (BACT) for this source category. The controls being applied to oil and gas operations in the Uinta Basin and

[3] It is possible, though not guaranteed, that development of these leases will be constrained by a no-net emissions increase requirement, either as a result of a basin-wide air shed strategy, a nonattainment SIP, or through NEPA mitigation. In addition, it is not clear at this time whether a no-net emissions increase policy is or will be required to address winter ozone

Wyoming currently will most likely also be the level of control required under a nonattainment SIP. BACT is a regulatory permitting determination (40 CFR Part 63) that defines the appropriate level of control for a specific activity, based on the level of technology available and considering the economic feasibility of the controls. Since many of the oil and gas activities associated with oil and gas development in the Uintah Basin are currently not required to obtain an air quality permit, BACT has not been "officially" defined for these activities. Presumptive BACT means the controls that are most likely to be BACT if and when this equipment does fall into a regulatory permitting framework. Most nonattainment SIPS require BACT level controls for specific source categories that have been identified as needing controls. BLM is requiring this level of control now as a proactive air resource management measure. BLM has not presented presumptive BACT as a solution or absolute mitigation to winter ozone in the Uinta Basin in any NEPA document.

Protest Contention: There are no deficiencies in the Uinta Basin monitors and they are operating according to CFR standards.

BLM Response: This issue is not relevant to the lease sale. BLM does not determine whether air monitoring equipment is being operated according to CFR standards, nor does BLM make the determination whether data collected from any specific air monitoring equipment is suitable for a NAAQS determination. This authority rests with both EPA and the State of Utah. To date, none of the data collected from the existing air monitoring network has been used to define a design value for ozone in the Uinta Basin. It is BLM's understanding this is due to the lack of an approved quality assurance plan for the monitoring network. Regardless, this is not an issue BLM has any control over. In addition, BLM is not disputing the monitored ozone values, simply pointing out that the area is still regulated as an attainment or unclassified area and that designation has implications as to what and how air pollution control is regulated.

Protest Contention: The BLM has not analyzed the impacts of its decision on regional dust production and climate change.

BLM Response: Utah BLM follows the Memorandum Of Understanding Among The U.S. Department Of Agriculture, U.S. Department Of The Interior, And U.S. Environmental Protection Agency, Regarding Air Quality Analyses And Mitigation For Federal Oil and Gas Decisions through the NEPA Process when analyzing climate change impacts in NEPA. The EA for this lease sale is consistent with that guidance. Based on the cumulative character of the phenomena of greenhouse gas (GHG) emissions and global climate change, it is currently impractical to link the effects of climate change to GHG emissions associated with a particular action. In addition, there are no established thresholds to determine when analysis of an action is required or when the impacts of an action are significant.

On the issue of regional dust production, SUWA has not presented any evidence that activities envisioned under this lease sale, including subsequent development and production, will contribute in any way to regional dust issues, nor does it present any evidence that regional dust is an issue at all. The paper SUWA refers to in its protest (Painter, et al) does not reference any oil and gas development activities, nor any dust generating activities in the Uinta Basin. SUWA is simply speculating that fugitive dust from energy development in the Uinta Basin will affect dust loading on snow surfaces on the Colorado Plateau.

As stated in the Price EA, BLM considered disturbed desert dust and its impacts to mountain snowpack as a precursor to climate change, as an issue brought forward during the EA public comment period. BLM has no way of assessing possible impacts based on the information available at the leasing phase. BLM believes that this issue is best incorporated into the overall

management of air quality in which Environmental Protection Agency (EPA) and the State of Utah (both agencies with expertise and jurisdiction by law) have agreed to certain attributes in which to monitor and manage air quality with the BLM. SUWA, in a circular argument, states that the BLM is violating NEPA and its MOU with EPA yet it also points out in the same paragraph that EPA only regulates air quality, not airborne dust as it relates to speeding snowmelt. Therefore the protest in effect states that BLM cannot be in violation of its MOU with the EPA since the EPA does not regulate such matters. The protest also fails to recognize that the analysis of $PM_{10}$ and $PM_{2.5}$ and fugitive dust addresses and mitigates the generation and transportation of dust. Since BLM has analyzed the impacts of particulate matter to extent possible at this stage of the process, its NEPA obligations have been fulfilled with respect to leasing .

Protest Contention: Oil and gas development authorized by leasing is likely to have significant direct, indirect, and cumulative effects on greater sage-grouse brood-rearing habitat.

BLM Response: The BLM database identifies the area as winter habitat for greater sage-grouse. The BLM also received comments from the United States Fish and Wildlife Service (USFWS) on June 7, 2011 and the Utah Division of Wildlife Resources commented on June 13, 2011 confirming that it was greater sage-grouse winter habitat. The BLM yields to these experts and has applied the appropriate winter habitat stipulation to the lease.

**Conclusion**

As the parties challenging the BLM's offering of the seven protested parcels for leasing, the SUWA (SUWA, TWS, NRDC, GCT, and RMW) bear the burden of establishing that the BLM's action was premised on a clear error of law, error of material fact, or failure to consider a substantial environmental question of material significance. They have not met this burden. For this reason, and for the previously discussed reasons, the SUWA, TWS, NRDC, GCT, and RMW protest as to parcels UTU88624, UTU88625, UTU88626, UTU88627, UTU88628 and UTU88629 is hereby denied.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office. You will find attached a list of those parties who purchased the subject parcels at the November 2011 lease sale and who therefore must be served with a copy of any notice of appeal, petition for stay, and statement of reasons.

s/ Juan Palma

Juan Palma
State Director

Enclosure
1. Form 1842-1 (2pp)
2. List of Purchasers

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, UT 84138

The Wilderness Society
Central Rockies Regional Office
1660 Wynkoop St Ste. 850
Denver, CO 80202

Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
202-289-6868

Grand Canyon Trust
2601 North Fort Valley Road
Flagstaff, AZ 86001

Rocky Mountain Wild
1536 Wynkoop St. Ste. 303
Denver, CO 80202

bcc: Protest Book
Reading File: UT-910, UT-930
Central Files
WO-310 (MIB, Rm. 501)
Field Office: Price

UT922 rnaeve: 9/19/2011

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

# INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

**1. NOTICE OF APPEAL**

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

**2. WHERE TO FILE**

NOTICE OF APPEAL.....

Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0151

or

Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101

and

WITH COPY TO SOLICITOR...

Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111

**3. STATEMENT OF REASONS**

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR.....

Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111

**4. ADVERSE PARTIES**.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

**5. PROOF OF SERVICE**.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

**6. REQUEST FOR STAY**.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

(Continued on page 2)

**Enclosure 2**
**List of Purchasers**

XTO Energy, Inc.
810 Houston St., Ste. 2000
Fort Worth, Texas 76102-6298

Bill Barrett Corporation
1099 18th St., Ste. 2300
Denver, Colorado 80202